IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1229

CITY OF PHILADELPHIA,

Respondent,

vs.

DANIEL EHRMAN,

Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINION BELOW

Respondent Accepts Petitioner's Description of the Reporting The Opinion of the Courts below.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

Where a non-resident of the City of Philadelphia is employed upon a federal enclave located within the City of Philadelphia, is imposition by the City of an income tax upon the wages earned by said non-resident within the City valid, legal and constitutional?

COUNTER-STATEMENT OF THE CASE

This action was instituted by Respondent in the Court of Common Pleas, First Judicial District of Pennsylvania (Philadelphia County) for collection of delinquent wage taxes. Service of process was obtained thereon pursuant to the Pennsylvania Long-Arm Statute, 42 P.S. 8301, *et seq.*[1]

Due to Petitioner's failure to plead to Respondent's Complaint judgment by default was obtained thereon. Pa. R.C.P. 1037(b). No appeal thereof being filed said judgment became final and was submitted for execution within the State of New Jersey.

An exemplified copy of the record in the Pennsylvania courts was entered of record in the Gloucester County, New Jersey District Court which granted Summary Judgment thereon in favor of Respondent. (Appendix C, 7a

1. This statute has since been repealed and replaced by the Uniform Interstate and International Procedures Act, 42 Pa. C.S. 5301, *et seq.*

Petitioner's Petition for Writ of Certiorari (hereinafter referred to as Petitioner's Petition).) Judgment was affirmed by the New Jersey Superior Court, Appellate Division (Petitioner's Petition Appendix B, 4a) and a Petition for Certification was denied by the New Jersey Supreme Court (Petitioner's Petition, Appendix A, 1a).

Respondent's cause of action arises from Petitioner's employment by the United States Government, in a civilian capacity, at the United States Naval Shipyard, Philadelphia Naval Base, Philadelphia, Pennsylvania. Petitioner further averred both facts which are not of record [2] and bold and knowingly untrue conclusions of law.[3]

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2. The record of this case is devoid of any reference yet alone evidence that Petitioner "commuted to his job by taking a privately operated ferry from National Park, New Jersey, across the Delaware River directly to a point within the boundaries of the federal enclave and never entering the City of Philadelphia." (Petitioner's Petition at 2) and that "[t]he City of Philadelphia does not provide municipal services to the Naval Base, which has its own fire department and police department" (Petitioner's Petition at 3).

3. Contrary to the statement contained in Petitioner's Petition (at 2-3 thereof) where the Commonwealth of Pennsylvania ceded land now occupied by the United States Naval Shipyard to the United States the right to serve civil and criminal process was *not* the only reservation made. The Commonwealth, on behalf of itself and its political subdivisions, *also reserved the right to levy and collect taxes on property, persons and franchises within the boundaries so ceded.* 74 P.S. 120.49. See Appendix "A" hereof.

In addition to the statement referred to in footnote 1, *supra*, referring to the lack of any support in the instant record for the proposition that the City of Philadelphia does not provide services to civilian employees of the United States Government employed upon the federal enclave heretofore named, this statement is also contrary to the specific legal holdings of several judicial decisions. See *Lang v. City of Philadelphia, et al, infra; Kiker v. Philadelphia, infra; Non-Resident Taxpayers Association v. Murray, infra; Non-Resident Taxpayers Association v. Philadelphia, et al, infra; In Re Thompson, infra;* and *Philadelphia v. Shaller, infra.*

Upon the denial of certification by the New Jersey Supreme Court a Petition for Certiorari was filed with this Honorable Court for which this Brief in Opposition is being filed in response thereto.

Contrary to Petitioner's allegation that he never enters the City of Philadelphia (Petitioner's Petition at 2), *it has been held as a matter of law* that the United States Naval Shipyard is legally within the City of Philadelphia. See cases cited *supra*.

REASONS FOR DENYING WRIT

Where a non-resident of the City of Philadelphia is employed upon a Federal enclave located within the City of Philadelphia, imposition by the City of an income tax upon the wages of said non-resident earned within the City is valid, legal and constitutional.

1. Both this Honorable Court and other State and Federal Appellate Courts have unanimously upheld the validity of the Philadelphia Wage Tax as applied to non-residents.

This Petition for Certiorari, a request for denial of which is now before this Honorable Court, is a new episode in the continuing struggle between non-residents of the City of Philadelphia employed at various Federal agencies within the City of Philadelphia that has been waged for almost forty years. Ever since the original enactment of the Philadelphia Wage Tax Ordinance, non-residents employed at Federal Agencies within the City of Philadelphia have attacked the validity and constitutionality of this Ordinance. Each and every time they have failed to have it overturned. See discussion of all cases *infra*.

In *Non-Resident Taxpayers Association v. Murray*, 347 F. Supp. 399, *aff'd* 410 U.S. 919 (1972), the lower court specifically stated, in a case involving a collateral attack upon the constitutionality of the ordinance:

> The authority of the City of Philadelphia to require non-resident employees to file tax returns and to pay a wage tax can no longer be controverted. 347 F. Supp. at 401 (Emphasis added).

In *City of Philadelphia v. Edward Konopacki and George Martin*, 27 Pa. Comm. Ct. 391, 366 A.2d 608

(1976), allocatur denied Pa. Supreme Court, the City of Philadelphia's right to collect a fine from those civilian federal employees employed within the City of Philadelphia who refuse to pay Philadelphia Wage Tax was sustained. In reaching its decision the Commonwealth Court stated:

> Appellee [City of Philadelphia] unquestionably has the power to "levy and collect" taxes on income earned within its borders, even by non-residents employed in a federal area. *Non-resident Taxpayers Assn. v. Municipality of Philadelphia*, 341 F. Supp. 1139, 1142 (D.N.J. 1971), *aff'd* mem. 406 U.S. 951 (1972), *Kiker, supra,* at 633, 31 A.2d at 294. (Emphasis added). 366 A.2d at 609.

Even more recently, in *City of Philadelphia v. Kenny, et al.*, 28 Pa. Comm. Ct. 531, 369 A.2d 1343 (1977), *cert. den.* 434 U.S. 923, 54 L.Ed.2d 281, *Reh. den.* 434 U.S. 1025, 54 L.Ed.2d 774 (1977),[4] thereby letting stand the decision of the Commonwealth Court, the entry of judgments against defendants therein for the delinquent taxes claimed by the City of Philadelphia was affirmed. In those cases defendants were all similarly situated to Petitioner herein, and each challenged the constitutionality of the Philadelphia Wage Tax. In rejecting this argument the Commonwealth Court stated:

> The constitutionality of the Philadelphia Wage Tax has been subject to continuing challenge over its nearly 37 year history under both the Pennsylvania and the United States Constitutions. Most of these

4. While the issue of constitutionality of the Philadelphia Wage Tax was not specifically presented by petitioners therein in their *Petition for Certiorari,* that issue was specifically raised by them as a defense below and could have been considered by this Honorable Court if it deemed appropriate.

challenges have been by New Jersey residents working in federal establishments in Philadelphia. They have been brought in both state and federal courts. The tax has been attacked from almost every conceivable angle: *as violating due process,* equal protection, uniformity and federal immunity; as infringing upon the privilege against self-incrimination; as unreasonably burdening interstate commerce; as impairing the obligation of contract; and as offending the privileges and immunities clause. Yet in each instance the tax has passed constitutional muster (citations omitted).

For many years New Jersey residents who are federal employees within the boundaries of Philadelphia have been fighting *to evade, or avoid; or find sanctuary from their responsibility as users of the services provided by the City of Philadelphia by fighting and not paying a wage tax which was first applied to this non-resident class in 1942.*[10] It took Acts of Congress and opinions of the Supreme Courts of both the federal and the state judiciary to resolve the issue of the authority of Philadelphia to tax wages earned inside its city limits. *All of that is behind us now. Yet these same constitutional questions are still mentioned in the briefs in the appeals currently before us,* apparently in the hope that some appellate court somewhere will change the law. That is not likely to happen, and it will not happen on this case. Suffice it to say that questions of the constitutionality of the Philadelphia Wage Tax Ordinance and its application to non-residents of the City working within Philadelphia have long since been put to rest, and we will not exhume those issues merely to verify that they are dead.

---

10. Having just witnessed the Bicentennial year, when the people of New Jersey and Pennsylvania as well as the people of their sister States have so genuinely shown concern for one another,

"Due process" questions have been decided "ad nauseum" for almost forty years, unanimously against the taxpayers. The Philadelphia Wage Tax Ordinance, as codified in 19-1500 *et seq.* of the Philadelphia Code, a copy of which is reproduced herein, in its entirety, as Appendix "B", was first enacted in 1939. Immediately thereafter, the constitutionality of the Ordinance was attacked, and in *Dole v. Philadelphia,* 377 Pa. 375, 11 A.2d 163 (1940), was sustained. Again, the constitutionality of this Ordinance was attacked, as it applies to Federal employees employed at the United States Naval Shipyard on League Island in Philadelphia. Again, the constitutionality was sustained. *Kiker v. Philadelphia,* 346 Pa. 624, 31 A.2d 289, *cert. den.* 320 U.S. 741 (1943). Since that time there has ensued a continuing struggle between the City of Philadelphia and

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it is ironic that these cases continue on in what this writer believes to be a frivolous and vexatious manner. There is no question that there have been serious constitutional questions, but they have been resolved many years ago, and yet, *many New Jersey residents* who desire, understandably, to avoid any more taxation *are still attempting to take all the benefits they can wring out of the City of Philadelphia without paying for same. This writer need not go into a litany of beneficial services provided by the City. It is sufficient to point to the provision of health care, fire and police protection, to the use of the streets, sewers, water, and other utilities; to the use of Philadelphia's hospitals, universities; colleges, museums, aviaries, libraries, zoo and conservatory, none of which facilities pay taxes. Enough is said concerning the benefits that the New Jersey residents are unfairly reaping at the expense of the Philadelphia taxpayers.* In 1977 most reasoning adults who have any familiarity with the front pages of their respective newspapers know that large metropolitan areas, especially cities like Philadelphia and New York, are close to bankruptcy because of the high cost of everything. Inflation hits government as well as it hits the private citizen. The people of this country must come to realize that in order to save the cities, which perform functions which make this country work, the cities cannot continue to provide services to non-residents without some kind of compensation. To hold otherwise would be to fail to realize that municipal overburden is one of the most important defects in the operation of local governments in this country (emphasis added) 369 A.2d at 1353-1354.

non-residents of Philadelphia employed by the Federal government within Philadelphia. In each and every test the constitutionality of the tax was challenged directly or raised collaterally in efforts attacking collection measures. See *City v. Schaller,* 148 Pa. Super. 276, *cert. den.* 317 U.S. 649 (1942); *Application of Thompson,* 157 F. Supp. 93, *aff'd* 258 F.2d 320, *cert. den.* 458 U.S. 931 (1957); *Non-Resident Taxpayers Association v. Philadelphia, et al.,* 341 F. Supp. 1135, *aff'd* 406 U.S. 951 (1972), 341 F. Supp. 1139, *aff'd* 478 F.2d 456 (1973); and *Non-Resident Taxpayers Association v. Murray,* 347 F. Supp. 399, *aff'd* 410 U.S. 919 (1972). In *Murray,* the lower court specifically stated that the City's right to assess and collect this tax "can no longer be controverted." 347 F. Supp. at 401.

In *Kiker,* taxpayer therein was a resident of the State of New Jersey who derived income from his employment by the United States Government at the Philadelphia Naval Yard, a federal area on League Island in the 26th and 48th wards of the City of Philadelphia, 74 Pa. C.S.A. §120.46 *et seq.,* the very same federal installation at which Petitioner is employed. The issues raised and decided by the Pennsylvania Supreme Court were threefold:

> 1. The Philadelphia Wage Tax is an attempt to tax compensation for services rendered by non-residents outside the City of Philadelphia.
>
> 2. The Philadelphia Wage Tax is an attempt to tax compensation of persons who received no protection or benefits from the City; and
>
> 3. The Philadelphia Wage Tax is an attempt to tax compensation earned as a result of employment by the Federal Government.

To each of these issues this Court clearly and decisively held the City of Philadelphia had the right to levy

and collect its wage tax, and even then, thirty-five years ago, this Honorable Court did not feel this issue needed further review by this Court. It is submitted that today further review of these issues is still unwarranted.

In *Schaller*, a Philadelphia resident employed upon the U.S. Naval Shipyard on League Island in Philadelphia challenged the imposition of the Philadelphia Wage Tax upon his earnings within the Navy Yard. Again, the City's right to levy and collect the Philadelphia Wage Tax was sustained.

In *Application of Thompson*, taxpayer therein, also a non-resident, a civilian employee at the Philadelphia Naval Shipyard, filed a petition for a Writ of Habeas Corpus seeking his release from custody of a Philadelphia County Deputy Sheriff who had arrested him pursuant to a Writ of Capias ad Respondendum. In dismissing the habeas corpus the court of necessity was forced to first face the question of whether the City of Philadelphia had the right to levy and collect its wage tax. It concluded that it did. To reach this conclusion the Court noted:

> This [Buck] Act has been construed to authorize a City to impose a tax on civilian employees of the U.S. Navy for the privilege of working in a naval ordinance plant located in such city. (citation omitted). It has been recognized for many years that income of non-resident federal employees earned in a state of subdivision may be taxed by such jurisdiction. *Shaffer v. Carter*, 1920, 252 U.S. 37, 52, 53, 55, 40 Ct. 221, 64 L.Ed. 445. . . .[13]

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13. The allegations of the petition that petitioner uses a ferry to cross the Delaware River directly to the Shipyard and that he has no contacts with other parts of Philadelphia does not exempt him from tax for the reasons stated in *Kiker v. City of Philadelphia, supra* . . .

In *N.R.T.A. v. Philadelphia, supra,* the organization representing that group of individuals who are civilian federal employees employed within Philadelphia filed a class action complaint challenging the constitutionality of the Philadelphia Wage Tax. In that case plaintiffs therein raised the identical constitutional issue as Petitioner herein raises. For comparison of the issues raised therein to the issues raised in the instant case, see Complaint in *N.R.T.A. v. Philadelphia,* attached hereto as Appendix "C." See paragraphs 15, 18, 19, 20, 32, 33, 37-38, 40 thereof. In that case, plaintiffs asked for the convening of a three judge constitutional court. Upon motion of the Municipality of Philadelphia the three judge court was dissolved (341 F. Supp. 1135) and this Honorable Court affirmed dissolution thereof (406 U.S. 951). Upon remand to a single judge of the United States District Court for New Jersey, the court ruling upon the merits of the case, and citing *Shaffer v. Carter,* 252 U.S. 37 (1920), this Court's time honored landmark decision sustaining the constitutionality of taxation of non-residents held the Philadelphia Wage Tax was constitutional (341 F. Supp. 1139). Upon appeal to the Third Circuit Court of Appeals the District Court's decision of Judge Cohen was affirmed on the basis of the taxpayer having an adequate remedy at state law (478 F.2d 456). However, at page 458-59 Judge Gibbons, writing for the Third Circuit, stated:

> Indeed, the power of the City of Philadelphia to tax wages of non-residents earned in the Philadelphia Navy yard has been litigated in the Courts of the Commonwealth. *Kiker v. Philadelphia [supra].* The *Kiker* case recognizes the taxing power here challenged.
>
> * * *
>
> The Johnson Act, then, is a sufficient reason for sustaining the dismissal of the Complaint for injunctive

> relief against the municipal ordinance without reaching the issue of its alleged unconstitutionality as applied to a federal enclave. We note, however, that *the Buck Act*, 4 U.S.C. §106, . . . *appears to provide ample justification for the decision of the Supreme Court of Pennsylvania in Kiker v. Philadelphia* (emphasis added).

In *N.R.T.A. v. Murray*, the same organization brought under class action challenging the constitutionality of the Philadelphia Wage Tax. In this action Plaintiffs therein sought to have the capias procedure used by the City of Philadelphia to enforce collection of delinquent taxes declared unconstitutional. In order to rule upon the question of the constitutionality of this procedure it was again essential for the court to first determine the tax was constitutional. The three judge constitutional court convened therein so held, see opinion of lower court at 347 F. Supp. at 401, stating that the City's right to assess and collect its wage tax "can no longer be controverted." See also *Konopacki* and *Martin, supra*, at 3-4 hereof.

Finally in *Lang v. City of Philadelphia, et al.*, 31 Pa. Cmwlth. 537, 377 A.2d 849, appeal dismissed 439 U.S. 804, 58 L.Ed.2d 96 *Reh. den.* 439 U.S. 998, 586 L.Ed2d 672 (1978), this Honorable Court dismissed an appeal by the taxpayer, thereby sustaining the validity of the tax as to non-residents. Plaintiff therein directly raised, among other issues, the question the ordinance's compliance with due process and performance of services by the City—the identical issue raised in the case at bar. Attention is also directed to Appellant's Petition for rehearing therein, in which Appellant threatened this Honorable Court with continued litigation unless that case was heard. It is respectfully suggested that this Petition is nothing more than a frivolous attempt to follow through with that threat.

The concept and problems relating to the imposition of state and local income taxes by the taxing authority where the taxpayer is employed, and where said taxpayer is a non-resident of that jurisdiction is a problem which is not limited to Philadelphia alone (even though it has been in the forefront of this litigation). Contrary to Appellant's assertion, this is not a case of first impression. The issues presented herein involve concepts that have been the subject of voluminous litigation, nationwide, and there have been many, many decisions of both state and federal courts, including this Court, all of which have sustained this concept where said tax is imposed in a non-discriminatory fashion. *Shaffer v. Carter, supra; Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60, 64 L.Ed. 460, 40 S. Ct. 228 (1920); *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 85 L.Ed. 267, 61 S. Ct. 246, 130 A.L.R. 1229, *reh. den.* 312 U.S. 712, 85 L.Ed. 1143, 61 S. Ct. 444 (1940); *Howard v. Commissioners of Louisville*, 344 U.S. 624, 73 S. Ct. 465, 97 L.Ed. (1953) (involving invalidity of imposition of the tax upon civilian employees employed upon a federal conclave); *American Commuters Association v. Levitt*, 405 F.2d 1148 (C.A. 2, 1969); *Dooley v. Detroit*, 370 Mich. 194, 121 N.W. 2d 724 (1963); *Angell v. Toledo*, 153 Ohio St. 179, 41 Ohio Ops. 217, 91 N.E.2d 250 (1950); *Arnold v. Berra*, 366 S.W.2d 321 (Mo. 1963); *Norristown v. Erdek*, 1 Comm. Ct. 577, 275 A.2d 911 (1971). See also Annotations, 15, A.L.R. 1326, 1331; 90 A.L.R. 484, 489; 156 A.L.R. 1370, 1373; 48 A.L.R. 3d 343; 71 Am. Jur. 2, State & Local Taxation §467; and *Hellerstein, W.*, Some Reflections on the State's Taxation of a Non-resident's Personal Income, 72 Mich. L.R. 1309.

In the instant case, the issue of non-discriminatory imposition of the Philadelphia tax is not at issue.

2. Petitioner's arguments are without merit.

Petitioner's opening statement puts into perspective the thrust argument is being presented, for at least the sixth time, *i.e.*, that a decision of the Pennsylvania Supreme Court *(Kiker, supra)* which this Honorable Court has followed for thirty-eight years (and as recently as 1978.— *Lang, supra*) is wrong.

In support thereof, Petitioner argues:

> (a) that he has an insufficient presence with the taxing jurisdiction against which the tax is based, (citing *International Shoe Co. v. Washington,* 326 U.S. 310, 90 L.Ed. 95, 66 S. Ct. 154 (1948) and *Shaffer v. Heitner,* 429 U.S. 565, — L.Ed.2d — (1966)). (Sic)
>
> (b) that the federal enclave at which petitioner is employed is not within the City of Philadelphia.
>
> (c) That the Buck Act, 4 U.S.C. §106 requires that the City have jurisdiction to tax before its grant of authority to impose the tax upon employees working on a federal enclave attaches.

Each of these arguments are patently inapplicable to the case at bar or legally incorrect.

It has already been held by this Honorable Court that the "presence" of a civilian federal employee employed at the very same federal enclave as petitioner herein was sufficient to satisfy the due process requirements under the Fourteenth Amendment to the United States Constitution. *City of Philadelphia v. John Bullion,* 28 Pa. Cmwlth. 485, 368 A.2d 1375, appeal dismissed 434 U.S. 914, 54 L.Ed.2d 271 (1977).

Appellant therein argued that the due process tests of *International Shoe, supra,* were not met. This Court rejected this argument and dismissed the taxpayer's appeal. In *International Shoe,* this court was presented with two

issues—whether there was a sufficient presence within the State for service of process and whether there was a sufficient presence within the State for imposing the tax. As to the former, this Court set forth the test for compliance with due process—presence of minimum contacts within the forum state and the exercise of jurisdiction did not offend traditional notions of fair play and substantial justice and gave a detailed analysis thereof. As to the latter, this Court held:

> The activities which establish its presence subject it alike to taxation by the State and to sue to recover the tax, 326 U.S. at 321, 90 L.Ed. at 105. (Citations omitted).

Consequently, if due process was satisfied for service of process in the identical case as the case at bar *(Bullion, supra), a fortiorari,* due process is satisfied for taxation herein *(International Shoe, supra).*

Petitioner attempts to distinguish *International Shoe* on the basis that in that case:

> No one disputed the territorial boundaries of the State of Washington. In the present case, however, the petitioner indeed disputed that Pennsylvania has any territorial jurisdiction to lay a tax on the federal area. (Petitioner's Petition at 5).

Petitioner attempts to support the foregoing by arguing that the Commonwealth when it ceded the federal enclave to the United States Government reserved only the right to serve civil or criminal process and that respondent does not provide any services to the enclave.

These arguments are fatally defective as a matter of law. The basis for supporting Petitioner's legally defective position is his continued erroneous designation of his place

of employment as an exclusive jurisdiction federal enclave. Petitioner's place of employment is not an *exclusive* jurisdiction federal enclave; it is a *partial* jurisdiction federal enclave.

To understand the difference between exclusive and partial jurisdiction enclave one must first understand the interrelationships between the four types of jurisdiction which the United States Government maintains over lands owned or occupied by it, exclusive jurisdiction, concurrent jurisdiction, proprietary interest, and partial jurisdiction.

Exclusive jurisdiction enclave is where the United States has acquired total domination, control and jurisdiction thereof with the sole reservation by the State being for the service of civil or criminal process.[5]

Concurrent jurisdiction enclave is where both the United States and the state have joint domination, control and jurisdiction thereof.

Proprietary interest enclave is where the state has retained total domination and control but has leased property to the United States.

Partial jurisdiction enclave is a combination of the above. It is not concurrent because domination, control and jurisdiction is concurrent only in certain reserved aspects and not over the entire enclave. It is not exclusive because more than the right to civil or criminal process has been reserved. Hence, it is partial.[6]

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5. See 1 State. 426 (1975); *United States v. Knapp*, 26 F. Cas. 792 (No. 15538) (S.C. N.Y. 1849); *United States v. Davis*, 25 F. Cas. 781 (No. 14930) (C.C.D. Mass. 1829); *United States v. Cornell*, 25 F. Cas. 646 (No. 14867) (C.C.D.R.I. 1819); and, *United States v. Travers*, 28 F. Cas. 204 (No. 16537) (C.C.D. Mass. 1814).

6. See discussion of various types of jurisdiction. *James v. Dravo Contracting Co.*, 302 U.S. 134 (1937) and Department of Army Pamphlet 27.21, Military Administrative Law Handbook, §§6.7 at 6-42 to 6-43.

In the instant case the right to levy and collect taxes is a specifically reserved right. 74 Pa. C.S.A. §120.49, see Appendix "A" hereof for text of reservation. Since more than the right to serve process is reserved the enclave is not exclusive jurisdiction. Since total jurisdiction is not held jointly between state and federal governments, it is not concurrent jurisdiction. It is concurrent only to this limited extent. Hence it is partial jurisdiction. Therefore to the extent of imposition of taxation the enclave at which Petitioner is employed is located in the City of Philadelphia and Petitioner's connection therewith is far more than just passing through the City to his place of employment. He comes to the city and he is employed therein on a daily basis.

Furthermore, in *Kiker, supra* and *Kenny, supra,* the court specifically identified the litany of services provided by the City to Petitioner and all those in like circumstances. See quote from *Kenny* at 4-6 hereof. In addition thereto, this Court in sustaining the validity of the tax directly or collaterally at least five times could not have done without first concluding that non-residents, like Petitioner, were the recipients of services rendered by Respondent. See cases cited *supra* at 2 hereof.

Finally, Petitioner argues that the *Buck Act,* 4 U.S.C. §106 requires the Respondent to secure jurisdiction to tax before the grant of authority created thereby is operative, *i.e.,* federal employees are subject to tax on income earned on a federal enclave. However, what Petitioner has neglected and refused to recognize is that there is jurisdiction to tax as noted heretofore in this entire brief.

CONCLUSION

In view of this Honorable Court's specific affirmance of Respondent's right to impose its wage tax upon non-residents employed upon a federal enclave in *Lang* in 1978, *Murray* in 1972, *Bullion* in 1977, and *Thompson* in 1957, and in its denial of certiorari in *Kiker* in 1943, *Kenny* in 1977, *Schaller* in 1942, it is respectfully submitted that the instant case does not present an issue which requires further review by this Court.

WHEREFORE, it is respectfully requested that Petitioner's Petition be denied.

Respectfully submitted,

ALAN J. DAVIS
City Solicitor

By: /s/ Stewart M. Weintraub
STEWART M. WEINTRAUB
Deputy City Solicitor
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 1981, five (5) copies of this Brief in Opposition to Petitioner's Petition for a Writ of Certiorari to the Supreme Court of New Jersey were personally served upon George J. Botcheos, Esquire, at his office, 36 Tower Street, Haddonfield, New Jersey 08033, as counsel for Petitioner. I further certify that all parties required to be served have been served.

/s/ Stewart M. Weintraub
STEWART M. WEINTRAUB

Deputy City Solicitor
Attorney for Respondent

15th Floor, Municipal Services Building
Philadelphia, Pennsylvania 19107

APPENDIX A

74 P.S. §120.49 Taxes; reservation of power to levy and collect

The jurisdiction so ceded to the United States shall be upon the further condition that the Commonwealth reserves to itself, and its political subdivisions, whatever power of taxation it may constitutionally reserve to levy and collect all taxes now or hereafter imposed by the Commonwealth, and its political subdivisions, upon property, persons, and franchises within the boundaries so ceded.

1945, March 28, P.L. 91, §4.

APPENDIX B

EXCERPTS FROM THE PHILADELPHIA CODE
(as amended)

Chapter 19-1500: *Wage and Net Profits Tax*

19-1501. *Definitions.*

In this Chapter the following definitions apply:

(1) *Business.* An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, co-partnership, association, governmental body or unit or agency, or any other entity;

(2) *Employee.* Any person who renders service to another for a consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter, including temporary, provisional, casual, or part-time employment;

(3) *Employer.* An individual, co-partnership, association, corporation, governmental body or unit or agency, or any other entity, who or that employs one or more persons on a salary, wage, commission, or other compensation basis;

(4) *Net Profits.* The net gain from the operation of a business, profession, or enterprise, after provision for all allowable costs and expenses incurred in the conduct thereof, either paid or accrued in accordance with the accounting system used, without deduction of taxes based on income;

(5) *Non-resident.* An individual, co-partnership, association, corporation, or any other entity domiciled outside the City;

(6) *Person.* Every individual, co-partnership, fiduciary or association.

(7) *Resident.* An individual, co-partnership, association, corporation, or any other entity domiciled in the City;

(8) *Salaries, Wages, Commissions, and Other Compensation.* All salaries, wages, commissions, bonuses, incentive payments, fees, and tips that may accrue or be received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered; but excluding

(a) periodical payments for sick or disability benefits and those commonly recognized as old age benefits;

(b) retirement pay, or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment;

(c) any wage or compensation paid by the United States to any person for active service in the Army, Navy, or Air Force of the United States;

(d) any bonus or additional compensation paid by the United States, this Commonwealth, or any other state for such service.

19-1502. *Imposition of Tax.*

(1) An annual tax for general revenue purposes is hereby imposed as follows:

(a) On salaries, wages, commissions, and other compensation earned by residents of Philadelphia after January 1, 1950 at the rate of 1¼%, after January 1, 1957 at the rate of 1½%, after January 1, 1961 at the rate of 1⅝%, after January 1, 1966 at the rate of 2%, and after July 1, 1969 at the rate of 3%, and after July 1, 1971 at the rate of 3 5/16%.

(b) On salaries, wages, commissions, and other compensation earned by non-residents of Philadelphia for work done or services performed or rendered in Philadelphia after January 1, 1950 at the rate of 1¼%, after January 1, 1957 at the rate of 1½%, after January 1, 1961 at the rate of 1⅝%, after January 1, 1966 at the rate of 2%, and after July 1, 1969 at the rate of 3%, and after July 1, 1971 at the rate of 3 5/16%.

(c) On the net profits earned in businesses, professions, or other activities conducted by residents after January 1, 1949 at the rate of 1¼%, after January 1, 1956 at the rate of 1½%, after January 1, 1960 at the rate of 1⅝%, after January 1, 1965 at the rate of 2%, and after January 1, 1969 at the rate of 3%, and after January 1, 1971 at the rate of 3 5/16%.

(d) On the net profits earned in businesses, professions or other activities conducted in Philadelphia by non-residents after January 1, 1949 at the rate of 1¼%, after January 1, 1956 at the rate of 1½%, after January 1, 1960 at the rate of 1⅝%, after January 1, 1965 at the rate of 2%, and after January 1, 1969 at the rate of 3%, and after January 1, 1971 at the rate of 3 5/16%.

(1.1) Nothing herein contained shall operate to bar the right of the City to demand, sue or collect any taxes due on salaries, wages, commissions, other compensation, and net profits under any prior tax thereon.

(2) The tax imposed under 19-1502(1)(a) and (b) shall relate to and be imposed upon salaries, wages, commissions, and other compensation paid by an employer or on his behalf to any person who is employed by or renders services to him.

(3) The tax levied under 19-1502(1)(c) and (d) shall relate to and be imposed on the net profits of any business,

profession, or enterprise carried on by any person as owner or proprietor, either individually or in association with some other person or persons.

19-1503. *Returns and Payment of Tax.*

(1) Each person whose net profits are subject to the tax imposed by this Chapter shall, on or before May 15 of each year, make and file with the Department a return on a form furnished by or obtainable from the Department setting forth the amount of such net profits earned by him during the preceding year and subject to the said tax, together with such other pertinent information as the Department may require.

(a) Where a return is made for a fiscal year or for any other period different from a calendar year, the said return shall be made within 135 days from the end of the said fiscal year or other period.

(2) Each person who is employed on a salaried, wage, commission, or other compensation basis, which is subject to a tax imposed by this Chapter and which tax is not withheld by his employer and paid to the City as provided in 19-1504, shall on or before the last day of January, April, July, and October make and file with the Department a return on a form furnished by the Department, setting forth the aggregate amount of salaries, wages, commissions and other compensation subject to the said tax earned by him for the three months ending on the last day of the month preceding, together with such other pertinent information as the Department may require.

(3) Whenever any person files a return required by 19-1503, he shall at the time of filing pay to the Department the amount of tax due thereon.

19-1504. *Collection at Source.*

(1) Each employer within the City who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct monthly or more often than monthly, at the time of payment thereof, the tax imposed by this Chapter on the salaries, wages, commissions, and other compensation due from the said employer to the said employee, except that due to employees engaged as domestic servants, and shall, on or before the last day of April, July, October, and January of each year, make a return and pay to the Department the amount of tax so deducted for the three months ending on the last day of the month preceding.

(a) The return shall be on a form or forms furnished by the Department, and shall set forth the names and residences of each employee of said employer during all or any part of the period covered by the said return, the amounts of salaries, wages, commission, or other compensation earned during such period by each of such employees, together with such other information as the Department may require.

(b) The employer making the return shall, at the time of filing, pay to the Department the amount of tax due thereon.

(c) The failure of any employer, residing either within or outside of the City, to make such return and/or to pay such tax shall not relieve the employee from the responsibility for making the returns, paying the tax, and complying with the regulations with respect to making the returns and paying the tax.

(2) When any employer, required to make deductions or returns under 19-1504(1), deducts an aggregate amount of such tax in excess of $50 but less than $250 during any calendar month (except the months of March, June, September, and December), he shall within 25 days after the last day of such calendar month, deposit such deduction with the Department or with any bank designated by the Department, which shall in all cases be a bank designated as a City depository pursuant to 19-201 (1).

(a) Each bank so designated shall issue official receipts to the employer for the money received from him, which money shall be credited to the City's account. Such deposits shall be reported daily to the Department.

(b) At the time of making such deposits, the employer shall file with the depository an intermediate return on a form or forms furnished by the Department.

(c) Every employer who has deposited monthly deductions as above provided shall at the time of making his quarterly return, attach thereto validated receipts issued to him by the depository and shall pay to the Department the balance due for such quarter.

(3) When any employer required to make deductions or returns under §19-1504 (1), deducts an aggregate amount of such tax of $250 or more during any calendar month, he shall within three banking days after each payroll period deduction date deposit the actual amount of tax deducted for that payroll period in the same manner as provided pursuant to §19-1504(2), but in no event shall an employer be required to make such deposit more frequently than one in any seven (7) day period.

(a) At the time of each deposit, the employer shall file with the Department or designated bank a depository form to be furnished by the Department which shall contain such information as the Department may require.

(4) *Penalties.*

For late deposits of withheld taxes due under this section there shall be added, in addition to the penalties set forth in Section 19-508 a penalty of 10% of the underpayment.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil 377-71

NON-RESIDENT TAXPAYERS
ASSOCIATION, etc., et als
v.
THE MUNICIPALITY OF PHILADELPHIA, et als

NOTICE OF ALLOCATION
and
ASSIGNMENT

Pursuant to Rule 11 of the General Rules of this Court, I have allocated the above entitled matter to *CAMDEN*.

Please file all pleadings and make all motions returnable there.

THIS ACTION HAS BEEN ASSIGNED TO THE HONORABLE MITCHELL H. COHEN, JUDGE.

ANGELO W. LOCASCIO, *Clerk*
by
PATRICK H. RONGA, *Deputy Clerk*

March 15, 1971
Date

THE COURT HAS DIRECTED THAT COUNSEL BE INFORMED THAT THERE WILL BE STRICT ENFORCEMENT OF GENERAL RULE 15 A OF THE LOCAL RULE OF THIS COURT, (Completion of discovery proceedings), AND SANCTIONS MAY BE IMPOSED FOR FAILURE TO COMPLY WITH THE RULE AND ORDERS ENTERED PURSUANT THERETO; INCLUDING DISMISSAL OF THE ACTION AND SUPPRESSION OF THE DEFENSE.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.

Complaint

NON-RESIDENT TAXPAYERS ASSOCIATION, a corporation on behalf of itself, its members and other persons who have been and will be similarly situated in the same class and classes of persons, AUGUST FANELLI, MICHAEL NOLE, HENRY STRAUB, JOHN DI FILIPPO, HARRY CANDARA and EDWIN SILVERSTEIN, on behalf of themselves and other persons similarly situated in the same class and classes of persons, *Plaintiffs,*

v.

THE MUNICIPALITY OF PHILADELPHIA, THOMAS ROGERS, individually and in his official capacity as Director of the Department of Collections of the Municipality of Philadelphia. THE COMMONWEALTH OF PENNSYLVANIA, MILTON SHAPP, individually and in his official capacity as Governor of the Commonwealth of Pennsylvania, UNITED STATES GOVERNMENT, GEORGE SCHULTZ, Director of the Office of Management and the Budget, individually and in his official capacity; JOHN CHAFEE, Secretary of the Navy, individually and in his official capacity; jointly, individually and in the alternative, *Defendants.*

1. Jurisdiction is founded on diversity of citizenship and amount, 28 U.S.C. Sec. 1332, on a federal question and amount, 28 U.S.C. Sec. 1331, on the deprivation of civil rights 28 U.S.C. Sec. 1343 and 28 U.S.C. Sec. 1346(2) for that part of the action against the United States arising under the regulations of the Executive Department in an

amount for less than $10,000.00, 28 U.S.C. Secs. 2201 and 2202, and 28 U.S.C. Secs. 2281 and 2284, this being an action for declaratory judgment, preliminary and permanent injunction to prevent irreparable harm and damages to the plaintiffs.

2. Plaintiffs are the Non-Resident Taxpayers Association, a corporation incorporated under the laws of the State of New Jersey, August Fanelli, Michael Nole, Henry Straub, William R. O'Toole, Harry Candara, John Di Filippo and Edwin Silverstein, individually and as a class who are citizens and residents of New Jersey, but who are employed in the Municipality of Philadelphia in the Commonwealth of Pennsylvania. Plaintiffs, August Fanelli, Michael Nole and Henry Straub are employed at the Philadelphia Naval Yard at League Island by the Federal Government and the suit is brought for all members of the class or classes of persons who are citizens and domiciliaries of New Jersey, but who are employed by the Federal Government at the Philadelphia Naval Yard and other naval installations in the Municipality of Philadelphia in the Commonwealth of Pennsylvania who now pay the Philadelphia Wage Tax, *i.e.*, Wage and Net Profits Tax Ordinance, December 13, 1939 later amended, now Sec. 19-1500 of the Philadelphia Code and who will pay the Pennsylvania State Income Tax as applicable to non-residents of the Commonwealth for income earned in the Commonwealth, said Act which was recently enacted and signed into law. A copy of which is not yet available.

3. Defendants are The Municipality of Philadelphia, a municipal corporation chartered under the laws of Pennsylvania, Thomas Rodgers, Director of the Department of Collections of the Municipality of Philadelphia individually and in his official capacity, The Commonwealth of Pennsylvania, Milton Shapp, Governor of the Commonwealth of

Pennsylvania, individually and in his official capacity. Joined as defendants individually, jointly and in the alternative are the United States Government, George P. Schultz, Director of the Bureau of the Budget, individually and in his official capacity and John Chafee, Secretary of the Navy, individually and in his official capacity.

4. This action is brought in accordance with Rule 23 of the Federal Rules of Civil Procedure.

5. Plaintiffs assert that the class is so numerous that joinder of all persons is impractical. There are approximately 15,000 non-federal New Jersey resident who are employed in Philadelphia and who now pay the Philadelphia Wage Tax and who are now liable to pay the Pennsylvania State Income Tax. There are also approximately 1,000 federal employees who are residents of New Jersey who are employed at the Philadelphia Naval Yard at League Island or at other naval installations within the Municipality of Philadelphia, who pay the Philadelphia Wage Tax and who now are liable for the Pennsylvania State Income Tax.

6. There are questions of law and fact common to the class i.e., whether citizens and residents of New Jersey can be forced to pay the Philadelphia Wage Tax and the Pennsylvania State Income Tax whether employees who are residents of New Jersey working for and on a federal reservation can be made liable to pay the Philadelphia Wage Tax and the Pennsylvania State Income Tax.

7. The claims and defenses of the representative parties are typical of the claims and defenses of the class as will be more fully explained in this complaint.

8. Plaintiff alleges that the representative parties will fairly and adequately protect the interests of the class.

9. Further under Rule 23blB, plaintiffs allege that adjudication with respect to individual members of the class would as a practical matter be dispositive of the interests of the other members not parties to the adjudication and substantially impair or impede their ability to protect their interests.

10. The defendants have failed to act on grounds generally applicable to the class as a whole as the complaints against New Jersey residents attached as Exhibit A indicate thereby making appropriate final injunctive relief and/or declaratory relief with respect to the class as a whole.

11. Defendants allege that questions of law or fact common to the members of the class predominate over any questions affecting only individual members i.e., whether citizens and residents of New Jersey are liable for the Pennsylvania State Income Tax and the Philadelphia Wage Tax that a class action is superior to the other methods available since the litigation attached in Exhibit A could create a risk of inconsistent or varying adjudications and would establish incompatible standards.

12. Plaintiffs allege that the value of the matter in controversy exceeds exclusive of interests and costs the sum of Ten thousand dollars ($10,000.00) in that the plaintiffs pay more than ten thousand dollars to the Municipality of Philadelphia and are damaged by more than ten thousand dollars ($10,000.00) each year by said taxes.

13. Plaintiffs are a corporation incorporated under the laws of New Jersey and the named individuals, who are citizens and residents of New Jersey and the class of members, who are citizens and residents of New Jersey.

14. Defendants to the diversity action brought under 28 U.S.C. Sec. 1332, are Philadelphia, a municipal corpo-

ration under the Laws of the Commonwealth of Pennsylvania, Thomas Rogers, individually and in his official capacity as Director of the Department of Collections of the Municipality of Philadelphia and Milton Shapp, Governor of the Commonwealth of Pennsylvania, individually and in his official capacity, and the Commonwealth of Pennsylvania.

15. The federal question with respect to defendants named in Paragraph 15 of the complaint arises under the following provisions of the Constitution of the United States: Article I Section 10 Clause 1, Article I Section 8 Clause 3, Article I Section 8 Clause 1, Article I Section 10 Clause 2, Article IV Section 2 Clause 17, Article I Section 8 Clause 17, Article VI Section 2, the Fifth Amendment, Section 1 of the Fourteenth Amendment, the due process equal protection and privileges and immunities clauses thereof.

16. The defendants have been and are continuing to deprive plaintiffs of certain rights, privileges and immunities secured by the Constitution of the United States thereby causing them irreparable injury by the continual collection of the Philadelphia Wage Tax which is to them unconstitutional and in violation of their rights.

17. The defendants alleged in Paragraph 15 have violated the sovereignty of the State of New Jersey by imposing the aforesaid taxes on citizens and residents of New Jersey.

18. The defendants alleged in Paragraph 15 of the complaint have violated the principal of duality of sovereignty between the federal and state governments by imposing taxes on employees who are employed by and work in an area under the exclusive control of the federal government.

19. The jurisdiction of this court with respect to defendants alleged in Paragraph 15 of this complaint is involved pursuant to the provisions of Title 28 U.S.C. Sec 1343(3) this being a suit in equity which is authorized by law. Title 42 U.S.C. Sec. 1983, to be brought to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Constitution and laws of the United States or by any act of Congress providing for equal rights of citizens. The rights here sought to be redressed are rights guaranteed by the due process and equal protection and privileges and immunities clauses of the 14th Amendment and Title 42 U.S.C. Sec. 1983 as hereinafter more fully appears.

20. Plaintiffs allege that since they are non-residents of the Municipality of Philadelphia and the Commonwealth of Pennsylvania said defendants are without jurisdiction to impose an income tax upon them and the imposition of said tax on them deprives them of due process, equal protection, their right of employment, their right to travel in interstate commerce and the privileges and immunities of citizens of the United States and New Jersey.

21. Jurisdiction against the United States, George Schultz as Director of the Bureau of the Budget, individually and in his official capacity and against John Chafee, Secretary of the Navy rests upon 28 U.S.C. Sec. 1346(2).

22. Plaintiffs, August Fanelli, Michael Nole and Henry Straub, and members of the class of employees who work at the Philadelphia Naval Yard on League Island and other federal installations in Philadelphia, and who are residents and citizens of New Jersey. Plaintiffs allege that Circular No. A-38 Revised of the Executive Office of the President Office of Management and Budget (Exhibit B of the Com-

plaint) which authorizes W2 and 1099 to be sent to the Municipality of Philadelphia violates the due process clause of the 5th Amendment, the right to exercise constitutional guarantees and the right of privacy, and has caused irreparable damage to plaintiffs and continues to cause irreparable damages and harm to plaintiffs.

23. The plaintiffs alleged in Paragraph 23 of the complaint, further allege that joint instruction 12750.2B Disc HQ Staff Instruction 1406.3B Paragraph 6F95)-6F(6)(d) (Exhibit C of Complaint) which disciplines employees for "Failure to honor just debts without good cause" violates plaintiffs' right to privacy, equal protection, free speech, due process, public employment, and the free exercise of said constitutional rights, and is a prior restraint upon the exercise of the right of free speech and possesses a chilling effect on the exercise of the right of free speech, thereby violating the first Amendment to the Constitution of the United States thus making said regulation void and null.

24. There is no nexus between plaintiffs fight against the Philadelphia Wage Tax and the federal governments threat to remove plaintiffs from their position so as to justify said action by the federal government.

25. Plaintiffs allege that Article I Section 8 Clause 3 which gives the Congress exclusive power to regulate commerce among the states is violated by the Philadelphia Wage Tax and Pennsylvania State Income Tax.

26. Therefore, the Supremacy Clause of Article VI Section 2 requires that said taxes be declared void since there is a conflict between local and federal jurisdiction in an area where the national government has exclusive jurisdiction.

27. The aforesaid taxes impair the obligation of contracts between non-residents and their employers in viola-

tion of Article I Section 10 Clause 1 by causing discharge of employees for failure to pay the tax.

28. Article I Section 10 Clause 2 says no state may lay imports or duties on imports and exports. The taxes in question are duties on the import and export of the employment and labor of plaintiffs.

29. Taxes on interstate commerce are the subject of the exclusive jurisdiction of Congress. Said taxes are in reality taxes on interstate commerce and therefore void.

30. Article I Section 8 Clause 1 is violated because said taxes give preference in interstate commerce to residents while discriminating against non-residents by bestowing an unequal and unreasonable quantum of benefits upon non-residents as compared to residents while taxing both equally.

31. Article I Section 8 Clauses 1, 4, 5 and 6 are manifestations that commerce among the states is to be under the exclusive control of Congress. The aforesaid taxes are direct taxes on interstate commerce and therefore void.

32. Article I Section 8 Clause 17 gives Congress exclusive control over all areas ceded by the states to the federal government. Any taxes on employees employed on such reservation i.e., the Philadelphia Naval Yard is in violation of this clause.

33. The Buck Act 4 U.S.C. §§104,105 is inapplicable because it gives the states authority to tax said areas only if they have such jurisdiction. Neither Philadelphia nor Pennsylvania have such jurisdiction to tax non-residents there being no sufficient nexus between plaintiffs and defendants.

34. Plaintiffs are subject to double and cumulative taxation by the imposition of aforesaid taxes thereby violating

their right to equal protection, privileges and immunities due process and the right to be free from undo burdens in interstate commerce.

35. Plaintiffs allege that they are denied the following benefits from the Commonwealth of Pennsylvania and/or the Municipality of Philadelphia: the eligibility for public assistance under 62 PURD. Stat. Sec. 2508.1(6) (Exhibit D), the benefit of enrolling their children in the public schools of the Municipality of Philadelphia (Exhibit E), the benefits of free public library privileges (Exhibit F), the benefits of free tuition at Philadelphia Community College (Exhibit G), the benefit of voting in Philadelphia (Exhibit H), the benefit of running for public office in Philadelphia (Exhibit I), the benefit of holding municipal positions of employment (Exhibit J) and any veterans' benefits (Exhibit K).

36. Plaintiffs civil rights both personal and property under 42 U.S.C. Sec. 1983 are violated by depriving plaintiffs of the benefits alleged in Paragraph 35, but placing the same tax rates upon them as individuals who receive the benefits alleged.

37. Said scheme denies equal protection and due process there being no sufficient justification for said discriminating scheme; no sufficient nexus between plaintiffs and defendants Philadelphia and Pennsylvania for said taxes at an equal rate as residents of Philadelphia and Pennsylvania.

38. Said taxes make no distinction between residents and non-residents; however, the benefits received from said taxes create an arbitrary and unreasonable distinction between residents and non-residents. Such arbitrary and unreasonable distinctions violate due process and equal protection as well as the fundamental principal that taxes

should bear some reasonable relationship to benefits received for such taxes. There is no relationship at all between the taxes in question and the benefits received. Therefore, the tax must fail as a violation of due process and equal protection.

39. Philadelphia lacks jurisdiction to tax non-residents i.e., residents of another sovereign state for the privilege of employment and said taxation violates the privileges and immunities clause of the 14th Amendment and Article IV Section 2 of the Constitution by denying to New Jersey residents the privileges and immunities of New Jersey citizens and national citizens to be free from taxation by states of interstate commerce, to enjoy employment, due process and equal protection and civil rights under 42 U.S.C. Sec. 1983.

40. Taxation of persons and things outside the jurisdiction (for taxation purposes) of the state and within the jurisdiction of another state violates due process, equal protection and the sovereignty of said state.

41. Conversely, a state has jurisdiction (for taxation purposes) of persons and things within its territory which do not belong to other jurisdictions.

42. A state has no jurisdiction (for taxation purposes) over persons or things which another sovereign power has exclusive jurisdiction. Residents of New Jersey are under the exclusive jurisdiction of New Jersey for the purposes of state taxation.

43. The sovereign power of Pennsylvania and the Municipality of Philadelphia does not extend to New Jersey citizens therefore there can be taxation of said New Jersey citizens.

44. Travelers in interstate commerce receive police and fire protection, the benefits of highways and streets, but

unlike New Jersey residents who are employed in Philadelphia and Pennsylvania they pay no tax on the privilege to engage in interstate commerce as do New Jersey residents who work in Philadelphia and Pennsylvania.

45. Plaintiffs repeat and allege all the facts in Paragraphs 21-23 of the complaint.

46. By submitting W2 and 1099 forms to the defendants Philadelphia and Pennsylvania, defendant, George Schultz infringes on the plaintiffs' right to privacy and deprives plaintiffs of equal protection and due process and public employment since submission of said forms amounts to the taking of the plaintiffs personal and real property. Once said forms are submitted to the states as a practical matter, plaintiffs become liable for the tax. This is an infringement of the contract of employment between the employee and the employer, since if the tax is not paid said contract can be severed by the employer.

47. Plaintiffs maintain that their fiscal situations are protected from infringement by the Bureau of the Budget by their right of privacy, which is violated each time W2 and 1099 forms are released to the Municipality of Philadelphia there being no sufficient contacts between Philadelphia and said employees to require the invasion of the privacy of their fiscal situations.

48. The action taken by the Department of the Navy as explained in Joint Instruction 12750.2B whereby plaintiffs can be suspended and fined violates plaintiffs right of free speech, due process and equal protection by depriving plaintiffs of their employment in a discriminatory manner based on the exercise of plaintiffs right of free speech by refusing to pay the Philadelphia Wage Tax. Said instruction is in effect a prior restraint upon the exercise of free speech and has a chilling effect upon the

exercise of that right. The penalty for the exercise of free speech would be the loss or at the very least suspension for a period of time from plaintiffs respective positions of employment.

49. Plaintiffs allege that 28 U.S.C. Sec. 1346 is inapplicable since the Courts of the state of Pennsylvania have upheld the Philadelphia Wage Tax and therefore, no plain, speedy and efficient remedy exists under state law.

WHEREFORE, plaintiffs respectfully pray that:

1. The Court convene a three judge District Court as required by Title 28 U.S.C. Secs. 2281 and 2284.

2. The court declare that the Philadelphia Wage Tax i.e., Income Tax Ordinance of December 13, 1939, Sec. 19-1500 of the Philadelphia Code and the Pennsylvania State Income Tax as it applies to non-residents unconstitutional or in the alternative that said taxes be apportioned with respect to non-residents according to the lesser degree of benefits that they receive.

3. The court declare judgment as to the rights and liabilities of the parties with respect to the said taxes in question according to 28 U.S.C. Secs. 2201 and 2202.

4. The court preliminarily enjoin and after full hearing, permanently enjoin the defendants alleged in Paragraph 14 from enforcing the Income Tax Ordinance of December 13, 1939, Sec. 19-1500 of the Philadelphia Code as to plaintiffs and all members of the class of non-residents who pay said taxes and enjoin the proposed collection of the Pennsylvania State Income Tax as to non-residents.

5. The court preliminarily enjoin and, after full hearing permanently enjoin George Schultz and the Bureau of

the Budget from enforcing Circular No. A-38 (Revised) whereby W2 and 1099 forms are sent to the Municipality of Philadelphia.

6. The court preliminarily enjoin and, after full hearing permanently enjoin the Secretary of the Navy from enforcing Joint Instruction 12750.2B whereby employees can be disciplined for exercising freedom of speech by failing to pay the Philadelphia Wage Tax.

7. The court grant such relief as shall be necessary and proper, including damages for all taxes deemed wrongfully paid.

BALLEN, BATOFF & LASKIN
Attorneys for Plaintiffs

By: _____
Lee B. Laskin

STATE OF NEW JERSEY)
) *ss*
COUNTY OF CAMDEN)

The undersigned NON-RESIDENT TAXPAYERS ASSOCIATION, being duly sworn according to law, deposes and says that it is plaintiff in the foregoing action and that the facts set forth therein are true and correct to the best of its information, knowledge and belief.

NON-RESIDENT TAXPAYERS ASSN.

By: MICHAEL NOLE
Michael Nole, *President*

ATTEST:

AUGUST J. FANELLI
Secretary

Sworn and subscribed to
before me this 12th day
of March, 1971.

LEE B. LASKIN

STATE OF NEW JERSEY)
) ss
COUNTY OF CAMDEN)

The undersigned AUGUST FANELLI, MICHAEL NOLE, HENRY STRAUB, JOHN DI FILIPPO, HARRY CANDARA and EDWIN SILVERSTEIN, being duly sworn according to law, depose and say that they are plaintiffs in the foregoing action and that the facts set forth therein are true and correct to the best of their information, knowledge and belief.

AUGUST FANELLI

August Fanelli

MICHAEL G. NOLE

Michael G. Nole

HENRY STRAUB

Henry Straub

JOHN DI FILIPPO

John Di Filippo

HARRY CANDARA

Harry Candara

EDWIN SILVERSTEIN

Edwin Silverstein

Sworn and subscribed to
before me this 12th day
of March, 1971.

LEE B. LASKIN

see 80

1226